IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

WP(C).No. 15501 of 2005(U)

PETITIONER:

D. GOPINATHAN NAIR,
PADINJARE MONAMKARA VEEDU, CHERTHALA TOWN,
N. CHERTHALA.

BY ADV. SRI.SUMAN CHAKRAVARTHY.

RESPONDENTS:

1. **VAIKOM TOWN SERVICE CO-OPERATIVE BANK LTD. NO.K.349, VAIKOM.**
2. **THE ARBITRATOR, ASSISTANT REGISTRAR (GENERAL), VAIKOM.**
3. **S. RAJAPPAN NAIR, NJALLAYIL VEEDU, NADUVILA VILLAGE, KIZHAKKANCHERI VADAKKEMURI, VAIKOM.**
4. **K.K. CHELLAPPAN, KALATHI VEEDU, ARATTUKULANGARA NADUVILA VILLAGE, VAIKOM.**
5. **K.K. SURENDRANATHAN NAIR, PALAKKATTU MADOM, KIZHAKKUMCHERI VADAKKEMURI, NADUVILA VILLAGE, VAIKOM.**

W.P.(C). NO.15501/2005:

6. THE STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, TRIVANDRUM.

BY ADV. SRI.T.R.RAMACHANDRAN NAIR,
SRI.KALEESWARAM RAJ,
SRI.N.SREEJITH,
GOVT. PLEADER SMT. DEEPA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.15501/2005:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE AWARD OF THE R.2. DTD. 30/05/2001.

EXT.P.2: COPY OF THE ORDER IN AP/100/2001 DTD. 28/01/2005.

EXT.P.3: COPY OF THE DECISION OF THE BANK DTD. 05/04/1988.

//TRUE COPY//

prv.

KURIAN JOSEPH J.

W.P.(C) No.15501 of 2005

Dated 7th June, 2007.

J U D G M E N T

The petitioner was an erstwhile employee(Secretary) of the first respondent cooperative bank. During 7.4.1988 to 7.7.1988, raw cashew nuts were procured by the bank. According to the petitioner, the 5th respondent committed certain irregularities. Learned counsel for the 5th respondent submits that he was only a Peon. Be that as it may, the petitioner retired from service on 28.3.1989. More than four years thereafter, the Director Board took a decision to initiate arbitration proceedings and ARC 3881/1993 was filed. An award was passed in the year 2001, fixing liability on the petitioner to the tune of Rs.11,940.85. Though the petitioner attempted an appeal before the Tribunal, that was also of no avail. It is the main contention of the petitioner that initiation of proceedings after a long period of his retirement amounts to violation of Article 14 of the Constitition. Petitioner is denied reasonable opportunity to peruse the records and take up his defences. It is to be noted that the suit is one for recovery of money on account of the alleged loss caused to the

bank in the matter of procurement of low quality cashew. After having extensively heard counsel on both sides, I am of the view that neither the Arbitrator nor the Tribunal has considered the grievance of the petitioner in the proper perspective. The allegation after all is that the procurement was of low quality cashew and in the process, the first respondent sustained loss. But such a case is taken up only more than five years after the alleged procurement. It is also to be seen that the petitioner had retired from service and the arbitration case itself is filed after 4 ½ years of his retirement. In such circumstances, the petitioner is certainly denied a reasonable opportunity to defend his case, in the facts and circumstances of the case. Therefore, initiation of the action for alleged recovery of loss is unwarranted. The impugned orders are hence quashed.

KURIAN JOSEPH, JUDGE.

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KURIAN JOSEPH, J.

O.P. NO. OF 2003

J U D G M E N T

Dated 7th June, 2007.